

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 05-0924 RB

LARRY LUJAN,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came before the Court on Defendant Lujan's Motion in Limine Regarding Calling the Liability Phase of the Trial the "Guilt Phase" (Doc. 461), filed on October 20, 2008. On November 17, 2008, the Court held a hearing, *inter alia*, on this motion. Having considered the submissions and arguments of counsel, and being otherwise fully advised, the Court finds that this motion should be granted, as described herein.

I. Background.

Mr. Lujan seeks an order prohibiting the United States, or anyone else, from using the phrase "guilt phase" to describe the first, or "liability phase," of the trial. Relying on *United States v. Henderson*, 485 F.Supp.2d 831 (S.D. Ohio 2007), Mr. Lujan contends that the use of the phrase "guilt phase" is unduly suggestive and inherently prejudicial to Mr. Lujan's right to a fair trial. *Id.*

The United States responds that the first part of the trial is correctly referred to as the "guilt phase" due to the fact that the jury is asked to find a defendant "guilty" or "not guilty" and the terms "liable" and "not liable" are not used in a criminal case.

II. Discussion.

In *Henderson*, the district court noted that the government did not object to the defendant's motion to prohibit the government and the court itself from referring to the first phase of the

proceeding as the guilt phase. *United States v. Henderson*, 485 F.Supp.2d at 841. The district court granted the motion and ordered that the first phase of the trial be referred to as the “trial phase,” not as the “guilt phase,” so as to avoid any undue influence on the jurors. *Id.* In addition, the *Henderson* court ordered that, if necessary, the second phase of the trial would be called the “eligibility phase” and the third and final stage would be referred to as the “sentencing phase.” *Id.*

The term “guilt phase” has the potential to plant the seed of guilt in the minds of jurors. The term “liability phase” is imprecise and could cause juror confusion. At oral argument, counsel for United States suggested that the term “guilty/not guilty phase” may be appropriate and less confusing to the jurors. While this term is technically correct, the term “guilty/not guilty phase” may prove a bit unwieldy. At the same time, the Court recognizes that it will be incumbent upon the Court and counsel to educate the jurors as to the different phases of the case as the proceedings run their course. The term “trial phase” would be accurate and would minimize any potential for undue influence on the jurors. The Court will exercise its discretion and require that the guilty/not guilty phase be referred to as the “trial phase.”

III. Conclusion.

Having considered the alternatives, I conclude that the term “trial phase” will be used to refer to the guilty/not guilty phase of this matter.

IT IS SO ORDERED.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE